



March 22, 2000

Ms. Linda Wiegman,
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2000-1124

Dear Ms Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133298.

The Texas Department of Health (the "department") received a request for four categories of information relating to dentists in the department's Texas Health Steps Program. Specifically, the requestor seeks:

- 1) Any and all written consumer complaints or inter-agency referrals handled by the [depatment] relating to any dentist in the Texas Health Steps Program, received between Jan. 1, 1998 and Dec. 1, 1999[;]
- 2) Any and all logs, transcripts, or documentation concerning consumer phone calls to the toll-free Medicaid fraud reporting hotline relating to dentists in the Texas Health Steps program, received between Jan. 1, 1998 and Dec. 1, 1999[;]
- 3) A list of all dentists in the Texas Health Steps Program who received more that \$300,000 in state reimbursements in the last year. The list should include provider name, provider number, street address, and yearly earnings[; and]
- 4) Any and all documents relating to [a particular] Texas Medicaid dental provider.

You inform our office that documents responsive to category 3 of the request, and all but one document responsive to category 4 of the request, have been or will be released to the requestor. You further inform our office that there are no documents responsive to category 2 of the request. You claim that the responsive information for category 1, as well as one responsive document for category 4, are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You explain that all of the submitted documents for category 1 relate to Medicaid recipients and were collected in connection with the department's responsibilities in administering the Medicaid program. You argue that this information must, therefore, be withheld because it is confidential Medicaid information under section 12.003 of the Human Resources Code. Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Section 12.003 of the Human Resources Code provides:

- (a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

(Emphasis added).

In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012; Open Records Decision No. 166 (1977). You state that release here is not for the administration of the assistance programs. Consequently, we find that the submitted documents for category 1 of the request must be withheld under section 552.101 in conjunction with section 12.003 of the Human Resources Code. *See* Open Records Decision No. 487 at 5-6 (1988).

You have also submitted to our office a memorandum dated June 29, 1999 which you state is responsive to category 4 of the request. You claim this memorandum is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. See Open Records Decision Nos. 493 (1988), 287 (1981).

You inform our office that the department operates a portion of the Medicaid program under delegation and direction from the Health and Human Services Commission (the "HHSC"). You explain that the responsive memorandum contains information relevant to an HHSC investigation of a particular Medicaid provider. You further explain that HHSC is charged with investigating various activities of Medicaid providers under state and federal law. See Gov't Code § 531.021; Hum. Res. Code § 32.039. However, the provision you have cited provide for *civil*, not *criminal* penalties. See Hum. Res. Code § 32.039. Because section 552.108 applies only to criminal investigations, we find that section 552.108 is inapplicable in this case. Therefore, you may not withhold the submitted memorandum under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathy S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ch

Ref: ID# 133298

Encl. Submitted documents

cc: Mr. Miguel A. Sancho
Inside Edition
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(w/o enclosures)